Clayton. The Indigent Insane. 1854

# THE INDIGENT INSANE.

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# SPEECH

OF

# HON. JOHN M. CLAYTON,

## OF DELAWARE,

ON

# THE VETO MESSAGE OF THE PRESIDENT,

ON

## THE BILL FOR THE BENEFIT OF THE INDIGENT INSANE.

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IN THE SENATE OF THE UNITED STATES, JUNE 15, 1854.

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1854.

# THE INDIGENT INSANE.

The Senate having under reconsideration the bill making a grant of Public Land to the several States of the Union for the benefit of Indigent Insane Persons, which had been returned by the President of the United States with his objections—

Mr. CLAYTON said:

Mr. PRESIDENT: I confess that I feel somewhat oppressed while approaching the discussion of a question of this magnitude under all the circumstances of this case. This subject has undergone a protracted debate, and it is a difficult thing for any man to command the attention of a wearied Senate. If I were not impelled by a strong sense of duty, I certainly should forbear to address you at all upon the subject; but with the impressions on my mind, it would be inconsistent with my public duty for me to withhold the free expression of my thoughts in relation to the President's message from my associates in this body. Indulge me, then, sir, while I perform this duty, as well as, under all embarrassments, I may, and suffer me to introduce a few preliminary observations, before I enter into the examination of the main questions it presents.

It was said by the honorable Senator from Georgia, [Mr. TOOMBS,] at the outset of this debate, in reply to some remarks which you, sir, (Mr. FOOT occupying the chair,) had made, that the President of the United States, in acting upon a bill sent to him for his approval, or disapproval, by Congress, had as free and unrestrained power to decide upon the whole merits of the matter, as any Senator on this floor, or any member of the other branch of the National Legislature. That I may not misquote the language of the honorable Senator, I will use his words as they are contained in the report of his remarks. His observation was:

"I say this power in the President is as full, ample, complete, and unrestrained, (and was intended so to be,) as that of the Senator from Vermont, or any other member of either branch of the Legislature, to vote for or against the bill, according to his judgment of its constitutionality and expediency. The language of the Constitution is broad. It gives the President the veto power in as clear terms as it grants the legislative power to the two Houses of Congress."

I advert to the sentiments thus expressed by the honorable Senator from Georgia, not merely because he uttered them, but because I know that the error contained in them is a very common one; and that the impression exists among gentlemen in both branches of Congress, that the President has as much right to exercise legislative power when he is acting upon a bill which has passed Congress, as any member of either branch of the National Legislature has when he is voting on that bill. This presents a question that I have never yet heard fully discussed; and the Senate will pardon me if I give now, somewhat at length, my own views in reference to that matter.

The first section of the first article of the Constitution of the United States provides:

"ALL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

As a necessary consequence, then, no legislative power whatever can be vested in the President or anybody else. The veto clause in the Constitution, the clause which directs the President to approve a bill, or to disapprove it, does not confer upon him ALL the veto power, but only a qualified and conditional veto, and it is a clause *in pari materia* with this, and to be construed in connection with it. The question is then, taking the two together, in what cases may the President, consistently with the true spirit and intent of the Constitution, exercise the veto power? If he converts it to purposes of legislation, he clearly violates the Constitution; but if he uses it, as I hold he is bound to use it, for the purpose of keeping the legislative body within the exercise of its legitimate functions, for the purpose of preventing the legislative body from transcending the limits which the Constitution has fixed for it, and especially from thus encroaching on the coördinate branches of the Government and the States; if he confines the power to these cases and to such inconsiderate and hasty measures as have, from some clerical or accidental mistake on their own face, palpably defeated or not expressed the "*legislative will*," then he is acting in the true spirit of

the Constitution. For these purposes he has not only the power to disapprove and reject, but it is his duty to exercise it. Whenever Congress exercises power beyond the limits of the Constitution, or as we commonly say, unconstitutionally, that is not the "legislative power" delegated by the first section of the first article of the Constitution. That is an exercise of ultra legislative power; and, in my judgment, it is to cases of that character, and cases where the true legislative will has been by a palpable blunder accidentally defeated, that the President was intended to be confined by the framers of the Constitution. As to cases of inconsiderate and hasty legislation, the purpose of correcting an error might at any time be still more appropriately obtained by requesting the President to return the bill for correction to the House where it originated.

Sir, let us see to what consequences the doctrine must lead us, that the President has a right to the same extent to exercise the power of approving or disapproving, when a bill is submitted to him, which a member of the National Legislature has when voting on the bill. The Constitution directs positively that the President shall, within a limited time, consider a bill sent to him, and at the expiration of that period return it, if he disapproves it, to the House where it originated, with his objections. He is thus bound to render reasons for the opinion he gives when he disapproves a bill. Not so a Senator of the United States, or a member of the House of Representatives, when voting on any measure before Congress. My honorable friend from Georgia, when giving a vote here upon any question, acting in obedience to the dictates of his own conscience, is answerable to no tribunal on earth for the vote he gives, except his constituents. He is not bound to render reasons, or to make objections if he sees fit to vote against a bill; and by an express provision of the Constitution, he is not answerable anywhere else for any speech or vote he may choose to give here. But the President, by the express language of the Constitution, is made answerable for his opinion, in case he rejects an act of Congress. When he has rendered his reasons for such a disapproval, the Senate or the House of Representatives, in which the bill originated, is then bound to consider it after having entered all his objections on the Journal. His decision and his reasons must then be questioned, and must become the subjects of critical examination, for it is so enjoined by the Constitution.

The cases of a member of Congress and the President of the United States are therefore in no respect alike. In the one case the right is unrestrained, and it is a duty to exercise it without restraint, and every member of each House of Congress is bound to protect every other member in the enjoyment of it. That unquestioned and unquestionable right is absolutely necessary for the success of our system of free government.

It was said by you, sir, (Mr. Foot in the chair,) in the course of the debate, that this veto power was a remnant of despotic authority. It is so. Since the day when the Plantagenets, the Tudors, and the Stuarts disappeared, we have heard of no such thing as a veto in England. No British monarch has dared to put his veto on an act of Parliament during the last hundred and seventy years, and if one should do it, it is believed it would be at the peril of his head.

Here the veto is not conferred by the Constitution, as it was formerly exercised in England, for it never was here an absolute veto. It was never like the veto of the Roman Tribune, who could put a perpetual interdict upon the operation of any act of the Roman Senate. We have here, not vested in the President, but in another branch of the Government, the Tribunitian power. The absolute veto upon the acts of the Senate is in the House of Representatives. It is with much more propriety delegated to that body by the American Constitution, than the same power of the people to prevent oppression upon them was conferred upon the Roman Tribune. Under the actual operation of our Government, the Senate is as much a popular body, according to my experience, as the other House, and is quite as anxious to guard the rights of the people; but in theory, the immediate Representatives of the people, as they are called, were put as a check upon the Senate, with all the powers of the Roman Tribune.

The question recurs, then, what is the power of the President within its true constitutional limits? Has he the power of a third branch of the legislative body, to defeat the legitimate *and constitutional* action of both the other two? Let us see whether it is possible that the framers of the Constitution intended it so to be.

The Secretary can inform me how many committees there are in this body, and I will thank him to mention the number. I do not know how many there are in the House of Representatives; but there are many more there, and any one can soon learn the number. In both these bodies men operate upon the principle of a division of labor. The general subjects of legislation are classified, and those of each class are referred to the appropriate committee. Each committee is confined within its own jurisdiction, and is bound to report upon the subjects confided to it.

The PRESIDING OFFICER, (Mr. Foot, after consulting the Secretary.) The Chair can inform the Senator from Delaware that there are twenty-seven standing committees of this body.

Mr. CLAYTON. Twenty-seven standing committees besides the select committees! Each of these has its own appropriate duties. Through those committees we legislate. We have the power, with the House of Representatives, to appropriate the public money to enable those committees to carry their investigations to any extent demanded by the interests of the nation in any case before us; but the President cannot appropriate one dollar to enable him to investigate anything. The Constitution never contemplated, then, as it did not give him the means, that he should examine subjects as we are enabled to examine them, or that he should be responsible for failing to examine them. It was never contemplated that he should exercise power either in the same way, or to the same extent, with Congress. In other words, I mean to say, the Constitution never contemplated that he should exercise the right of putting his veto on any act of Congress on mere grounds of policy or expediency. Whenever he does that, he transcends the constitutional limits marked out in the instrument called the Constitution of the United States, by trespassing on the rights of the legislative body, and the people they represent. He is not a legislative representative of the people. But when he confines himself to

vetoes upon unconstitutional acts of Congress, he acts strictly within the limits of his jurisdiction, and has a clear and well-defined right to the exercise of the power.

There is not a man here now, and there never was a man on this floor since the Government was first established, who was able to investigate one twentieth of the subjects that present themselves before the Congress of the United States each session. We perform these duties by dividing the labor, as I have stated, through the instrumentality of our committees. When those committees assemble, what is their practical operation? The chairman divides the labor among the members of the committee. All of us, who have served on committees during any considerable period of time, know that no chairman could possibly transact all the business of his own committee. He therefore divides it, and the members to whom he assigns particular duties perform them, and present to him and to the other members of the committees the result of their labors. If that result be approved by the committee, a report is made to the Senate; and the Senate, as a general principle, acting upon faith, confiding in the judgment and ability of the committee, without investigation, unless under peculiar circumstances, to which I shall presently advert, vote as the committee have decided. Sir, if I had not the reports of committees to guide me, I should not know, one half the time, how to vote on the questions which present themselves here. I admit that, sometimes, we do not take a committee's report. Sometimes, a member of a committee finds fault with a report, and then arises a debate; and whenever there is a difference of opinion in the body, we are all called upon and feel bound to investigate the subject which has created such division; but, ordinarily, we do not attempt it; and no man ever existed who could perform the whole duty of examining *pari passu*, with the proceedings of Congress, every subject that is presented to it.

Now, sir, one objection which I make to the veto message—and it is for that purpose that I introduce these remarks—is, that the President rests his opposition to the bill under consideration, not only on constitutional grounds, but on grounds of non-expediency and policy. True it is, ("and pity 'tis, 'tis true,") it has been done before by some of his predecessors; but I deny that such a power was ever rightfully exercised by any of them. Perhaps I shall be best understood if I take the distinction between power and right. The President may rightfully or wrongfully put his veto on any act of Congress. So a Senator has the *power* to vote against his oath and his conscience; but he has not the right to do it; and the President surely is, and ought to be, confined by the Constitution as much as a member of Congress.

Sir, suppose the President of the United States were actually to attempt to investigate every question of expediency, justice, and policy, as well as every question of constitutionality, presented by the bills which are sent to him for his signature. Assume, for the sake of the argument, that it is not only his right, but his duty, to do that. Then what a situation is he placed in! He is bound, according to that argument, to discharge a duty for which he has not any means conferred on him by the Constitution or the law. He is not, by any constitutional provision, entitled to receive, and, in fact, he does not receive, any of the reports of committees of Congress, or any part of the evidence on which they are founded. He cannot even summon a witness, or cause a deposition to be taken. He can employ no clerks, no agents, not even a messenger, for such a purpose. He has no power to send for persons or papers, in order to make the examination which is often indispensable, and he has not a dollar to expend for such an object. His six Cabinet Ministers have more duties than they can now perform, without turning legislators, and could be of no use to him as such. To turn them from the duties Congress has enjoined upon them would be a gross abuse of power. And if the whole of them were to devote themselves, day and night, to the review of all our legislation, they could not, properly, examine one fourth of it. Their offices were not created by the Constitution, but by the law; and, as mere creatures of the legislative will, should they attempt to thwart the wishes of those who established their offices and prescribed their ministerial duties, they might find themselves confronted either by a repeal of the laws which gave them their being, or by a legislative impeachment. The President must, therefore, supervise the legislation of Congress without assistance from any quarter, if he attempts it.

But more, sir; if the framers of the Constitution and the laws had intended that the President should examine the infinite multitude of topics arising out of the questions of expediency, justice, and policy of all legislative measures, *de novo*, would they not have directed that the memorials or petitions which are addressed exclusively to the Legislature, and accompany all bills, when sent from one House to the other, should go with the bills to him, too, and be examined by him with them? He never sees the representations of parties who apply to Congress. Their petitions and memorials are not brought before him; and if there are counter petitions and remonstrances, he never sees them; so that he is in the dark on both sides. He is in the dark as to all the facts educed by legislative investigation for and against every measure which is passed here on principles of expediency. He hears no debates. If he were intended to constitute a third legislative body, petitions and remonstrances should be addressed to him as fully as they ever were to an English monarch, to enable him to do justice. If he is really a part of the legislative body, the other two Houses ought never to have had the power to adjourn without consulting him, nor should he have been less protected than they are by being liable, as he is, to be questioned for his speeches and decisions in other places.

Practically, we all know that no President ever did undertake to review all the legislation of Congress. No, sir; not one tenth part of it. No true friend of any President will contend that it was or can be his duty to perform such an impossibility. If it be his duty, he would be impeachable for not performing it. If he had such a power, and exercised it, he, and not Congress, would have *all* legislative power, for they could not even pay their own per diem without his consent, and he could control them, or drive them home without a dollar of their wages, if they displeased him. If such be his powers and his duties, every Pres-

ident we have had has been impeachable for signing bills without having examined into the expediency of every law approved by him.

Sir, for these reasons I think, and I respectfully submit to the Senate, that it is not true that the President of the United States has the same unrestrained liberty and right to investigate and decide upon his convictions of public policy, which you had, as a Senator of the United States, when you gave your vote for this bill for the relief of the indigent insane; and the distinction between the powers and duties of members of Congress and those of the President of the United States, is well defined and manifest. Mr. Jefferson evidently entertained the opinion I have expressed, and he went further. When Washington required the opinions of his Cabinet in writing, on the constitutionality of the first bank charter, which he finally approved, Mr. Jefferson, in his reply to the requisition, while opposed to the bank, yet gave the salutary caution to the Executive head that the veto power was given to protect from the encroachments of the Legislature the constitutional rights of first, the Executive; second, the Judiciary; and third, the States and State Legislatures. To these objects he would have confined the veto power; and even in those cases he thought the encroachment should appear to be clear before the President should thus defeat the legislative will. I cannot but think, sir, that the President who warned us all, in his inaugural address, against the exercise of any *doubtful* powers, would have foreborne all remarks, resting his veto upon the mere impolicy or inexpediency of such legislation as that contained in the bill, if, amidst the pressure of his other duties, the opinion of Mr. Jefferson, and other eminent expounders of the Constitution, had been fully presented to his mind.

Indulge me, sir, in another preliminary observation before I proceed to the discussion of the main question before the Senate. The honorable Senator from Virginia, [Mr. HUNTER,] who discussed this question at length, remarked in the outset of the debate, when the message was first received by the Senate:

> "When the day comes for the consideration of this question, the *friends of the Administration* will be able, and will, at least, be willing to meet the issue, and if they shall not be able to vindicate the message, the fault will not be that of the President, or of the message, but of themselves."

I regretted to hear this from the honorable Senator from Virginia, because it sounded in my ear like an invocation of the power of party to decide this question. Feeling anxious that there should be a conscientious discharge of duty by us all on this great question, I feared the effect of the appeal, not merely here, but before the whole country. I knew that if an appeal could successfully be made to party, it would be useless to enter on the discussion. Those who are called, as I suppose, in common parlance, friends of the Administration, constitute a majority in this body so overwhelming as perhaps to amount to more than two thirds of the Senate. I have seen no organized opposition to it; and under such circumstances it is impossible that any organized opposition could exist. I do not believe that my honorable friend from Virginia intended all the effect that was produced by his remark. But, sir, what have the friends of the Administration to do with this bill more than with any other? Was it made a party question during its passage? It passed here by a majority of more than two to one. It passed the other House by an immense majority. It is impossible that it could have been made a party question upon its passage. Then why should it become such now? The very instant you appeal to party, we know very well the partisan press takes up the song, and the judgment of the public is foreclosed. There is the injury that is done. Surely, one of the high principles and honorable bearing and feeling of the honorable gentleman from Virginia never could have intended to invoke the spirit of party against a measure so beneficent, so noble, as that contained in this bill—a measure that commended itself to the President of the United States; as he tells us, rousing all the sympathies of his heart—a measure that commends itself to every good man here and everywhere. No one can vote against it unless impelled by a stern conviction of duty under the Constitution of the United States. No man will vote against it without feeling regret and sorrow that it is his duty to do so.

Sir, who were the men that did vote in favor of this bill when it passed the Senate? Were they enemies of the Administration? *Were not many* of them as true and firm Democrats as any known in the United States? Was not my honorable friend from Illinois, [Mr. SHIELDS,] whose noble conduct and bearing in this body have attracted the admiration, respect, and friendship, I believe, of every member of the Senate, and who is known among us all to be as firm and true a Democrat as any man in this nation, a friend of the Administration? Was not the honorable Senator from Mississippi, [Mr. BROWN,] to whose able and profound argument for the bill we listened with such interest when it was delivered here, a friend of the Administration? Sir, he is one who has nobly performed his duty on this occasion. Doubtless conscious, after he had heard the remarks of the Senator from Virginia, that he might incur the displeasure of his own party friends, and the censures of an unscrupulous party press, still he dared, in defiance of all party appeals, to obey the dictates of his own conscience, and delivered upon this floor, in favor of the measure condemned by the veto, one of the ablest arguments ever heard in the body. I cannot but honor him for it. I would apply to him the language or the paraphrase of a passage from an old Greek poet:

> "His be the praise who, looking down with scorn
> On the false judgment of the partial herd,
> Consults his own clear heart, and dares *to be*,
> Not merely to be *thought*, an honest man."

In addition to these distinguished friends of the Administration, there are many others here who voted for this bill. Are they to consider themselves driven out of the party because they supported it; or is it demanded of them that they shall now sing their political *decantatur*, and repent of the sin, by voting down the bill they have passed?

Sir, I trust, when we come to the final vote on this question, we shall find, as we did when the question was decided before, that party spirit has nothing to do with it. If honorable gentlemen on the other side of the Chamber will tell me, however, that they consider the safety or welfare of the great Democratic party in this country is involved in the destruction or defeat of such a mea-

ure as this, I will forbear the discussion, and my friends who join with me in an anxious wish for the success of this bill, will cease to make opposition to the veto, because we know it would in such a case be utterly and absolutely fruitless. But the impression would be left, which history would confirm and time could never eradicate, that it was a weak and miserable cause which could be sustained only by an appeal to the power of party. When Jupiter, disputing with the countryman in the fable, appealed to his thunder, the countryman replied: "I thought you were wrong before, but now I know it, for you are always wrong when you appeal to your thunder." To crush such a humane measure as this by the mere force of party, would be proof not only of the want of confidence in the force of argument and reason against it, but of the want of humanity in those who should defeat it.

I come now, sir, to inquire what is the real question presented by this bill? I hold that the true question is, whether the Federal Government and a State government can enter into a compact with each other for the erection of a lunatic or insane asylum within the limits of the State, with that State's share of ten millions of acres of public lands, the State to have the sole control over the institution; the State to decide what sort of buildings shall be erected, and when and where they shall be built; the State to govern the institution, to appoint all the officers, and physicians, and experts, who are to take care of the insane; and the General Government to meddle with it not at all, and in no form or shape to assume any jurisdiction over it? Is such a compact as that between the Federal Government and a State constitutional or not? That is precisely the question presented by the actual provisions of this bill.

Mr. President, before the Constitution of the United States was adopted, before this Government existed, the States of this Union had power to make any compacts they pleased. They could make treaties and contracts as fully as any independent community or nation. This was a necessary consequence of their sovereignty and independence as proclaimed by the Declaration of July 4, 1776. The only question, then, so far as relates to the power of a State to enter into a compact like this, is, has she surrendered that power by anything in the Constitution; and if so, what is it? He who contends that the power to make such a compact has been surrendered, is bound to show the passage of the Constitution in which it has been surrendered. No such clause exists there. It is true there is a strict prohibition of all compacts between two or more States; but there is no prohibition of compacts between the Federal Government and a State; and the States and the Federal Government have been in the habit of making compacts similar to this, *ab urbe condita*.

Sir, I do not stand here to make assertions of this description without the book to sustain me. I am prepared to present abundant cases where compacts of this kind have been considered and adjudged valid; but one or two will suffice. On the 2d of March, 1831, the State of Ohio having passed a legislative act requesting Congress to surrender to her the whole Cumberland road within her limits, Congress passed a law for that purpose, and from that day she assumed power over the road, and has kept it up and managed it, collected all tolls upon it, punished persons for nuisances on it; and this General Government having thus surrendered all power over that part of the road, has never attempted since to exercise any. On the 2d of March, 1833, (the State of Virginia having made application to Congress by a legislative act for a similar surrender to her,) Congress passed a law surrendering the whole Cumberland road within Virginia to that State. This was another legislative compact. Virginia agreed to keep up and maintain the road, and Congress yielded to her the power to collect tolls to enable her to keep it in repair, and gave her the whole power over it, precisely as this bill yields to the States all power over the insane asylums to be erected within their limits under it. I have a volume here under my hand which contains both these legislative acts, granting to the States of Ohio and Virginia, respectively, the Cumberland road within their respective limits.

The question is, were these acts constitutional? In the first place, will any man attempt to tell me that a compact of that character between the Federal Government and a State, surrendering a road which cost the Government millions of dollars, on condition that the State should keep it up, the State voluntarily agreeing to keep it in repair, is unconstitutional? Fortunately, sir, the Supreme Court of the United States has decided the question. In III. Howard's Reports, page 720, will be found the case of Neill & Moore *vs.* The State of Ohio, in which this principle was decided: That where the State of Ohio had undertaken to make a discrimination between passengers traveling in mail stages on the Cumberland road, and other passengers traveling on it, by charging the former with tolls not charged on the latter, contrary to the *compact* between Ohio and the Federal Government in the act of the 2d March, 1831, the act of the Legislature of Ohio making that discrimination was against the compact and void, and the Court said expressly, it was *in violation of the compact*. Here, then, is a decision of the Supreme Court of the United States directly affirming the constitutionality and validity of such compacts.

Who were the men who passed these laws? I think there was no serious opposition to them from any quarter in Congress. Andrew Jackson was the President of the United States who signed both these acts. The honorable Senator from Michigan, [Mr. CASS,] who addressed the Senate at such length in opposition to this bill upon the grounds stated by him on the day before yesterday, was a member of the Cabinet of General Jackson, in 1833, when the compact with Virginia was passed, and when General Jackson approved that compact. Did he differ from the President? I presume he did not differ from the President, or we certainly should have heard of it. Did any member of that Cabinet doubt the validity of the compact? I presume not, because we never heard that there was opposition to it. General Jackson did not doubt; the Virginia Legislature did not doubt; the House of Representatives, composed, as it was at that time, as well as the Senate, of some of the ablest men the country has ever produced, did not doubt. Then why doubt now? Where is the difference in principle between that case and the one presented to you here? This bill proposes

a compact with a State to erect an insane asylum. *There* was a compact between a State and the Federal Government to keep up and maintain a road. The value of the property surrendered in the case of the road was greater than the value of the property contemplated to be surrendered to Virginia now for an asylum. The whole title over the Cumberland road in Virginia was then surrendered.

The honorable Senator from Virginia, [Mr. HUNTER,] who discussed this subject with much ability, said, in speaking on this subject:

"Suppose we should undertake here, ourselves, to say that we will apply these lands to internal improvements, or schools, or certain objects which we choose to designate within the States. Is it not plain, that the moment we do so, the States would abandon the care of them? Clearly so; because each State would be afraid that, if it applied its own money to endow an insane asylum, or a college, or to make a road, it would disable itself to that extent from obtaining the money of the United States to be applied to those objects, and therefore would fail to do it. The State would withdraw its care; because it would be clearly impossible to carry it on under the direction of two heads."

Now, has there been any difficulty of this kind in consequence of the grant of the Cumberland road? The honorable Senator undertook to say that a State, if she were indulged in this way, would withdraw her care from her roads, and rely on the General Government to grant her favors in making them. But no such neglect has ensued from the cession of the Cumberland road, either in Ohio or Virginia.

Sir, it is dangerous to argue against the existence of a power by showing that the power may be abused. You have no resting-place if you rely on arguments like that. On the same principle, you may take up any clause among the trust powers in the eighth section of the first article of the Constitution, and you may say, as the honorable Senator from Virginia said, that this Government would become an Oriental despotism if these powers were unlimited. Take the case of the power to declare war. That power can be abused as easily as this or any other power. Congress may declare war against the whole world; and in that way he might go on and show us how the nation might be destroyed by making war on the whole world. Congress has power to raise and maintain a navy. We may, if we choose to indulge ourselves in these extreme cases, suppose Congress silly enough to spend the whole funds of the Government in the construction of ships, covering the ocean with vessels for no purpose. Congress might perpetrate these enormities; therefore Congress has not the power to declare war or raise and maintain a navy. That is the argument. The honorable Senator from Virginia went on to say:

"Such a construction as that which has been given to this clause of the Constitution, would vest in this Government powers as unlimited as any which are possessed by the Russian autocracy, or an Oriental despotism."

You might say that because Congress has power to raise and support armies, it would raise a standing army of half a million of soldiers, to subvert the liberties of the people, or that because it has unlimited power to borrow money, it might and would bankrupt the nation! But I have been taught in a different school. I have been accustomed to think there is no conclusive or even satisfactory argument fairly to be drawn against the existence of a power, from the mere fact that that power may possibly be abused. Confidence must rest somewhere. The framers of the Constitution chose to repose confidence in Congress; and although Congress has, in a hundred cases, exercised the very power denounced by the honorable Senator, it has never yet, thank God, brought this country to a Russian autocracy, or an Oriental despotism. I have the confidence to believe it never will. Of course, if it be true that the very "fountain from which our current runs" has been poisoned by the election of none but rogues, and scoundrels, and traitors, to Congress, your whole system of self-government must necessarily become a failure.

The President in his message, and the honorable Senators from Michigan and Virginia, all dwelt upon the authority of Jackson. The Senators seem to consider that, with his mighty name in their favor, they would carry conviction to the country; that, all his doctrines being right, if this veto message could be sustained upon his principles, the country would stand by the Executive veto. Now, sir, I am perfectly willing to take Jackson as the standard on this question. I am willing that this bill shall be tried by the *standard* of Jackson's practice; and if I do not show, by an examination of Jackson's acts, that the principles of this bill are constitutional, I am willing to surrender the question.

I have already referred to the Cumberland road case, which, I submit, as a practical exhibition of his opinions, is directly on the very point. Next, I will take the case of his signature to the bill for the construction of the Miami canal, which was approved by him on the 2d of April, 1830. That was the case of the application of land, for the construction of a canal within a State. Again, Jackson approved an act ceding thirty-six square miles to the Polish exiles who settled, I think, in Illinois, after having been driven from Europe by the Emperor of Austria. I will not turn to the volume before me, which contains this act, for it is unnecessary, as every one remembers it; and I think some of my honorable friends who preceded me in the debate quoted it.

I come next to General Jackson's vote upon the bill for the relief of the Marquis De Lafayette. I have heretofore been looking to his acts as the President of the United States. I wish now to look at his acts as a Senator of the United States. I have here the documents to show that he voted, when a member of the Senate, for the grant of a township of land, as did every other Senator, to Lafayette, not for services rendered, but as a free, voluntary donation. Two hundred thousand dollars were also granted in that act, but that grant was for services rendered, and then there was a donation in a separate section of a township of land, to be located anywhere on any unappropriated land of the United States. For that act I hold the proof that Andrew Jackson, as a Senator of the United States, *voted*. This act seems to recognize the distinction between the grant of money and of land. The money was expressly appropriated "for services rendered to the United States." The grant of the land was made by men who evidently thought their power over the public land was unlimited.

Mr. BADGER. Have you got the names?

Mr. CLAYTON. Here are the names of all the Senators. *The vote on that bill was unanimous.*

I do not take the pains, for I know the time of the Senate is precious, to refer to every great man who voted for these precedents, which were denounced so much by the honorable Senator from Virginia; but I say that the Senate of the United States, and it is sufficient for my purpose to say it, has always been a body whose decisions were worthy of respect, (to say the least of it,) not only by its successors, but by men anywhere and everywhere.

Well, sir, let us look a little further into this matter. In the year 1836, a very famous statute passed this and the other House of Congress. It was called the deposit act; but the practical effect of it was to distribute among the States of this Union, forty millions of dollars, being the surplus then in the Treasury. Mark you, this was not the case of a distribution of land, but of money. Andrew Jackson being President of the United States, approved the bill. Some, and, indeed, nearly all the great leaders of the Democratic party, voted for it in both branches of Congress. Among the distinguished men who voted for the thirteenth section of that act, which was to provide for the distribution or deposit, as it was called, were Franklin Pierce of New Hampshire, and Caleb Cushing of Massachusetts. So many other able men voted on that occasion in favor of the measure, that I pray leave to refer to the record. I find that, for that thirteenth section, in the House of Representatives the yeas were 142, and the nays only 66. Among the yeas, I find the names of Linn Boyd, Caleb Cushing, Philemon Dickerson, John Fairfield, Ransom H. Gillet, Edward A. Hannegan, Benjamin C. Howard, Samuel D. Ingham, Richard M. Johnson, Cave Johnson, John W. Jones, former Speaker, Amos Lane, Dixon H. Lewis, Francis S. Lyon, John Y. Mason, Thomas M. T. McKennan, Henry A. Muhlenberg, Franklin Pierce, Francis W. Pickens, Jesse Speight, Joel B. Sutherland, Aaron Vanderpoel, and my honorable friend, the Senator from Connecticut, Isaac Toucey. Some of these honorable gentlemen (the President included) voted against the final passage of the bill establishing the banks as places of deposit, but on the question whether the distribution clause, depositing the money with the States, should be inserted in the bill, the vote stands as I have read it. Most of them voted for the final passage of the bill also.

Here, sir, is a pretty formidable array of names. Now, let us inquire what is the character of this thirteenth section for which they voted, because I know very well that the argument with which I am to be met on this subject is that it was a loan or deposit, or something of that kind, and not a regular distribution. But I mean to look through the shell, and into the heart and substance, and I shall find there, and show that it was a distribution, and was intended as a distribution. Among the conspicuous men who were then members of this body, and who opposed that act, was Thomas H. Benton, of Missouri. There were but five members of the body who did not vote for it. In his work which has been lately published, this distinguished statesman, who has sounded all the shoals and depths of legislation, gives us an account of its passage, and the view which he took of it. In a speech which he delivered on the occasion, he characterized the bill in these words:

"It is, in name, a deposit; in form, a loan; in essence and design, a distribution. Names cannot alter things; and it is as idle to call a gift a deposit, as it would be to call a stab of the dagger a kiss of the lips. It is a distribution of the revenues, under the name of a deposit, and under the form of a loan. It is known to be so, and is intended to be so; and all this verbiage about a deposit is nothing but the device and contrivance of those who have been for years endeavoring to distribute the revenues, sometimes by the land bill, sometimes by direct propositions, and sometimes by proposed amendments to the Constitution. Finding all these modes of accomplishing the object met and frustrated by the Constitution, they fall upon this invention of a deposit, and exult in the success of an old scheme under a new name. That it is no deposit, but a free gift, and a regular distribution, is clear and demonstrable, not only from the avowed principles, declared intentions, and systematic purposes of those who conduct the bill, but also from the means devised to effect their object. Names are nothing. The thing done gives character to the transaction: and the imposition of an erroneous name cannot change that character. This is no deposit. It has no feature, no attribute, no characteristic, no quality of a deposit."

With a view, as you will find by looking at the record, of testing the question, whether it was intended by the Senate to be a loan or a distribution, he made a motion to insert the word "loan," instead of "deposit," and it was voted down by the whole Senate, with the exception of five members, he himself being one of the five. Practically, it was a distribution of that much public revenue and money.

Now, Mr. President, I will not undertake to argue the constitutionality of that act, for I mean to restrain myself within the limits of the question before us; nor can any man draw me into a discussion of the merits or the constitutionality of that law. I am showing what were the acts of General Jackson. I am replying to the authority of his great name, which is relied upon on the other side. Sir, I would rather rely on what I think a still greater name—that of Thomas Jefferson, who has also been quoted on this occasion by the honorable Senator from Virginia, and by the President himself.

On the 2d of December, 1806, Thomas Jefferson sent in his sixth annual message to Congress, and in that message he told Congress that such was the accumulation of public moneys in the Treasury, that the time had come when it was necessary to reduce the revenue, or to resort to some expedient for getting rid of the surplus money; and he recommended that it should be applied to canals, and roads, and purposes of education. He recommended that the proceeds of the *customs duties* should be applied to these purposes, but not without an amendment of the Constitution. But he proceeded immediately afterwards to say, and did positively recommend, that the purposes of education should be answered by the erection of a national university out of the proceeds of the public lands.

I have that message here. It is important for several purposes. It shows, among other things, that Thomas Jefferson thought it a duty, when laying imposts for revenue, to protect domestic manufactures against foreign competition. It shows also that he thought you could not apply the *imposts* to canals, roads, and purposes of education, but that you could apply the public lands for the purpose of erecting a national university. After stating the fact of the surplus in the Treasury, he says:

"The question, therefore, now comes forward: to what other object shall these surpluses be appropriated, and the whole *surplus of impost*, after the entire discharge of the

public debt, and during those intervals when the purposes of war shall not call for them? Shall we *suppress the impost* and give *that advantage to foreign over domestic manufactures?* On a few articles of more general and necessary use, the suppression in due season will doubtless be right, but the great mass of the articles on which *impost* is paid are foreign luxuries, purchased by those only who are rich enough to afford themselves the use of them. Their patriotism would certainly prefer its continuance and application to the great purposes of the public education, roads, rivers, canals, and such other objects of public improvement as it may be thought proper to add to the constitutional enumeration of Federal powers. By these operations, new channels of communication will be opened between the States, the lines of separation will disappear, their interests will be identified, and their union cemented by new and indissoluble ties. Education is here placed among the articles of public care, not that it would be proposed to take its ordinary branches out of the hands of private enterprise, which manages so much better all the concerns to which it is equal; but a public institution can alone supply those sciences which though rarely called for are yet necessary to complete the circle, all the parts of which contribute to the improvement of the country, and some of them to its preservation."

The honorable Senator from Virginia will perceive that Mr. Jefferson anticipated no such disastrous and ruinous results as the Senator anticipated from the General Government making these improvements itself, or helping the States to make them; but he stood ready to recommend, and did recommend that, as there was a constitutional difficulty in the application of *imposts* for such purposes, constitutional power should be conferred to remedy the difficulty. The honorable Senator from Virginia has drifted to leeward a great way, from the doctrines of Thomas Jefferson. His message proceeds:

"The subject is now proposed for the consideration of Congress, because, if approved by the time the State Legislatures shall have deliberated on this extension of the Federal trusts, and the laws shall be passed, and other arrangements made for their execution, the necessary funds will be on hand, and without employment. I suppose an amendment to the Constitution, by consent of the States, necessary, because the objects now recommended are not among those enumerated in the Constitution, and to which it permits the public moneys to be applied."

Then comes the paragraph to which I invite the gentleman's special attention:

"The present consideration of a national establishment for education, particularly, is rendered proper by this circumstance also, that if Congress, approving the proposition shall yet think it more eligible to found it on a donation of lands, they have it now in their power to endow it with those which will be amongst the earliest to produce the necessary income. This foundation would have the advantage of being independent on war, which may suspend other improvements, by requiring for its own purposes the resources destined for them."

Now, sir, if I understand the English language, Thomas Jefferson there takes the very distinction which my honorable friend from North Carolina [Mr. BADGER] took in this discussion, and which has been so fiercely assailed, between the power over the money of the Government, and the power over the land; between the trust powers conferred by the eighth section of the first article of the Constitution, relating to imposts and excises, and money, and the power conferred by the second clause of the third section of the fourth article of the Constitution, which relates exclusively to the disposition of the public land. Mr. Jefferson recommended the establishment of a national university out of the lands, and asked for no amendment of the Constitution in that case; but he expressly said, as the honorable Senator from North Carolina maintained in this debate, that though you may not have the power to apply the moneys from imposts for these purposes under the eighth section of the first article, you can apply the lands. Then the question arises, what is the true construction of the second clause of the third section of the fourth article of the Constitution, in reference to which such an ingenious argument was made by the honorable Senator from Virginia? I will read the language of that clause from the forty-third number of the Federalist:

"The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

Mr. Madison proceeds to comment in this number of the Federalist on this clause, by saying:

"It is a power of very great importance."

He then adds:

"The proviso annexed is proper in itself, and was probably rendered absolutely necessary by jealousies, and questions *concerning the western territory*, sufficiently known to the public."

The Senator from Virginia differs from the Senator from North Carolina in this particular: The latter contended that the word "property," *contained* in this clause, was not extended to money; but was used in the simple, ordinary sense in which the word was commonly used at the time the framers of the Constitution employed it, as contradistinguished from money. The Senator from Michigan admits this to be the true meaning of the word. But the Senator from Virginia insists that property necessarily includes money, and that in this clause it was intended to be included as a subject for the exercise of the *jus disponendi*. Consequently, said he, if the power over the land is construed to be unlimited, the power over the money is equally so; and as that leads to an absurdity, the reasoning of the Senator from North Carolina is erroneous. The Senator from Virginia quoted a passage from Blackstone's Commentaries, to show the difference between things real and things personal; but the passage itself did not purport to give even a technical definition of property.

I think it evident, from the comment made by Mr. Madison, that he never contemplated that the clause had reference to the money of the Government. He says that, at the time the Constitution was made, and certainly he himself had knowledge of the fact, for he was a member of the convention, there were many and conflicting *claims to the public lands;* and that clause was rendered absolutely necessary by the questions and jealousies "concerning the Western Territory," not concerning the public money. Take the remark of Mr. Madison in connection with the remarks of another distinguished member of the convention which framed the Constitution—Mr. Hamilton. In the seventh number of the Federalist, Mr. Hamilton says:

"We have a vast tract of *unsettled territory* within the boundaries of the United States. There still are *discordant* and *undecided claims* between several of them; and the dissolution of the Union would lay a foundation for similar *claims* between them all. It is well known that they have heretofore had serious and animated discussions concerning the *right to the lands* which were ungranted at the time of the Revolution, and which usually went under the name of *crown lands*. The States within the limits of whose colonial governments they were comprised have *claimed* them as their *property*."

Thus, we understand from both Hamilton and

Madison, the nature of the *claims* which are referred to in the proviso to this clause which is the subject of controversy. They were claims to land —not claims to money. I know very well that you may say, and say with propriety, that property embraces everything, money, as well as anything else which a man or a State can own; but when you come to the contemporaneous expositions of this clause by the framers of the Constitution, to the reason and purpose for which the word was used, you feel yourselves compelled to confine the meaning of the word "property," as here used, to objects other than money. I ask the honorable Senator from Virginia, and those who felt so confident in the early stages of this controversy, if this clause was intended to embrace money as well as land, why is it that the power is contained in a separate article, totally distinct from the eighth section of the first article which contains the trust powers of Congress in reference to the imposts, taxes, and public money? If they are both to be construed exactly alike, if the limitations of the one extend necessarily to the other, what reason can be shown for the separation?

I suppose that, according to the plain meaning of the language used in the second clause of the third section of the fourth article of the Constitution, the whole *jus disponendi*, the whole power of disposition of the public domain was intended to be conferred upon Congress, but not without limitation, as the Senator from Virginia seemed to suppose was our position. The honorable Senator from North Carolina never contended for such a doctrine. On the contrary, he referred to the preamble of the Constitution to show that there were the objects for which all powers were conferred by the Constitution, and that if the disposition were made for objects hostile to the purposes there expressed, it was plain such a power ought never to be exercised; and could not constitutionally be exercised. But he did not contend, as the Senator from Michigan supposed, that the preamble contained any positive grants of power. He referred to Mr. Calhoun's exposition of the treaty-making power for the purpose of showing that it was not unlimited. But he did contend, and I contend, that this clause in the third section of the fourth article of the Constitution is not governed and controlled by the same limitations and restrictions which are extended to the public money; and such was the opinion of Thomas Jefferson, as I have quoted it. Such, too, as has been shown by the Senator from North Carolina, who quoted from his works, was the opinion of Judge Story, whose knowledge of constitutional law was quite equal to that of any man in this Senate.

If the proviso in the second clause of the third section of the fourth article of the Constitution, which declares that "nothing in this Constitution shall be so construed as to prejudice *any claims* of any State," refers to money as well as lands, then it can be shown that there were conflicting claims among the States to money which was held in some way like the land, as a common fund. But neither Hamilton nor Madison alluded to any such claims, because there were none such. Will it be contended that, because it is limited in the eighth section of the first article of the Constitution, that there shall be no appropriation of *money* for the purpose of raising and supporting armies for a longer term than two years, therefore there shall be no appropriation of land for such a purpose for a longer time than two years? If so, Congress could not appropriate lands on which to build a hospital, a fort, a magazine, or a barrack for the Army. I suppose the property referred to in this clause was the property on the public domain, such as the western posts at that time contained. But it may have been any other property of the United States, such as the Navy itself, the public arms, the forts, dock-yards, and sites for buildings of every description. For Congress can certainly dispose of all these, as the Senator from Michigan admitted.

Sir, I have not done yet with the precedents. I have quoted many set by Jackson, and I desire to come now to the only one upon which honorable gentlemen who oppose this bill have to rely. I refer to President Jackson's veto of the land bill in the year 1833. I was here participating in the action of the Senate at that day, and voted for the land bill. I was here during the memorable night of the 2d of March, 1833, the last night of that session, for the 3d of March was on Sunday. I can now tell honorable gentlemen what occurred on that occasion; and I will do it, that they may judge for themselves how much weight is justly due to that Executive veto.

We passed the land bill through the Senate by a vote of twenty-four to twenty, perhaps about the middle of the session of 1832-'33, and sent it to the House. Pending that bill in the House, the famous compromise of 1833 passed the Senate, and shortly after was taken up in the other branch of Congress and passed both Houses. I was one of those here who voted for the compromise of 1833. The State of South Carolina was, as I thought, driven to the wall, and there was a disposition to press her further than I considered right. I joined with those who voted to extricate her from the difficulties in which she had been placed, and I have not seen cause to lament that vote. The passage of that bill produced a change of feeling in the House of Representatives and in the Senate, such as I have never witnessed in the same length of time anywhere. Southern gentlemen saw the position in which those representing the manufacturing districts of the country were placed by their voluntary action in reducing duties in order to extricate them. In return for that, they make an exhibition of true southren feeling. Seeing that the friends of the compromise, who had ever been friends of the protective policy, had made such sacrifices in opposition to all the efforts of Mr. Webster and some other leading champions of the "*force* bill," they immediately determined that the land bill which we had so much at heart, should not fail if they could possibly save it. Before the passage of the compromise of 1833, that bill had no chance of passing the House of Representatives; but the moment the compromise passed, the southern vote changed front in favor of the land bill; and it was carried in the other House on the 1st of March, 1833, by a vote of ninety-five to forty, and was sent to the President on the same day. There were but about two days left of the session. The President, as we now know from authority, drew up an executive veto against this favorite measure of Mr. Clay, to which Mr. Calhoun's friends had acceded. He came down to the room near the Senate Chamber, where the President usually

remains on the last night of the session, and sent for the most distinguished member of this body at that day, one who in the struggles of that year, and for twelve years in the history of this country, exercised more control over its destinies than any other man in the same period—THOMAS HART BENTON, of Missouri. I saw him when he left the Senate Chamber on the night of the 2d of March, 1833, and observed his return. Jackson had sent for him. Jackson had seen the temper of the House; he knew what they had done since the passage of the compromise bill; and it could not have escaped his inquiries, that if such things could be done in the House, the same might be done in the Senate. He clearly saw that if he sent an Executive veto to the Senate, and there should be the same revolution of feeling in that body as in the House, the veto would be overruled by the vote of the Senate as well as by that of the House. The vote, ninety-five to forty in the House, put its final passage there out of doubt. The question was as to the Senate, and Mr. BENTON was sent for by the President to ascertain what would be the feeling of the Senate. Now, I will read from his testimony on the subject. At page 364 of his "Thirty Years View," he says:

"The next evening, (2d March, 1833,) the President attended, as usual, in a room adjoining the Senate Chamber, to be at hand to sign bills and make nominations. It was some hours in the night when the President sent for me, and, withdrawing into the recess of a window, told me that he had a veto message ready on the land bill, but doubted about sending it in, *lest there should not be a full Senate;* and intimated his apprehension *that Mr. Calhoun and some of his friends might be absent, and endanger the bill;* and wished to consult me upon *that point.*"

That is what General Jackson told Mr. BENTON. Now, let us see what Mr. BENTON said to him:

"I told him I would go and reconnoiter the Chamber and adjacent rooms."

I saw him when he returned to reconnoiter. I was engaged in the same business of reconnoitering myself. Not a word passed between us. I, who was one of those who had to answer at home for the compromise bill of 1833, was reconnoitering, (if that is the proper word) among members here, with a list of yeas and nays in my hand, to ascertain whether we could *veto the veto*. Now let us see what was the effect of Mr. BENTON's reconnoitering, and then I will tell you what was the effect of mine. He says that he

—"found that Mr. CALHOUN and his immediate friends were absent; returned and informed him," [General JACKSON,] "*when he said he would keep the bill until next session*, and then return it with a fully considered message; his present one being brief, and not such as to show his views fully."

I took, as I said, a list of the yeas and nays, and with it went round the Chamber, and I discovered that we had a majority of more than two thirds against the veto, if the President sent it here; and had he returned it, I know the bill would have become a law in despite of his negative. I have never doubted since, that Mr. BENTON was the man who gave him the information of what the fate of his veto would be, and here is a confession of it. But, sir, we did not know Jackson's purpose till the small hours of the morning had passed away; and we sat here till morning. When the iron tongue of midnight had tolled twelve, we became alarmed and exceedingly anxious to know when the land bill was coming back. Not a man of us left his place. All that were necessary to do the needful stood by, ready. After waiting a while, we sent one of the Pennsylvania Senators, who had voted with us, and who, being a good Jackson man, we thought ought to know how things stood at the other end of the avenue, to find out when the message was coming. He returned, and said that he thought it would come pretty soon. After waiting a great while longer, we sent another Senator, and he returned, and said he could not tell when it would come. By-and-by day broke, and the sun rose, and was high in the heavens on Sunday morning, when we, finding that the President, to use the common phrase, had *pocketed* the land bill, and did not intend to send it to us at all, lest he should be overruled, adjourned without day; and so we lost our land bill.

The ground taken by the friends of the President to justify his course was, that there were not ten days allowed him for the consideration of that bill. They might have taken the same ground against one half the most important measures of legislation of the session; for more than one half of the legislation of a session often passes the two Houses of Congress during the last ten days. I do not deny that the President had the power to hold the bill for ten days; but I deny his right to do so in case he has formed his opinion, and his object is to deny to two thirds of Congress the right to control him. The effect here was to evade the constitutional responsibility which devolved upon him; and if he was justifiable in that, he might have withheld half the bills of the session. At the next session, held nine months after, when a new and a different Congress was assembled, to which he was in no way responsible for this act, and which, if it had been unanimous against his veto, could not have overruled it, he sent in a message containing his objections to the bill. He was under no obligation then to send it to Congress, and he might as well have pasted it on a sign-post.

It is evident, that if the President be justified in withholding a bill under such circumstances, no bill which passes Congress within ten days of the close of a session can possibly become a law without his consent. His veto, then, in such cases, is an absolute and unconditional veto unknown to the Constitution. But this is not the chief objection I have always entertained against his course on that occasion. From the testimony of Mr. BENTON himself, it is certain that his veto *was prepared* on the night the session expired. He came here to order its delivery to the Senate. He kept it back, *not because he wanted time to prepare it*, but because he knew if he returned the bill, as he was then bound to do, it would become a law. His passions and his pride overpowered him. To humble Clay, his great rival, and to disappoint him as to the fate of a measure he knew Clay had most of all others at heart, he set at naught the rights of Congress and the people, and forever deprived the old States of their just shares of the public domain.

The work of that night is bound to become a marked point in the history of this nation. An entire revolution in the mode of disposing of the public domain contemplated by the deeds of cession and the fathers of the Republic, may be dated from the 3d March, 1833, twenty-one years ago.

Since that period, the revolution has been complete; and this veto now before us is only another evidence of what I have long feared was a fixed fact, that the old States of this Union, by whose blood and treasure this domain was acquired, are not to be permitted to share in its distribution. Some constitutional objection will always be raised against any proposition which offers them any participation in it. Maryland and New Jersey, which refused to join the Union till Virginia yielded her claim to the land northwest of the Ohio, (which she did by her first deed of cession on the 2d January, 1780,) and Delaware, which joined only with a solemn protest that by so doing she did not mean to surrender her just right to a fair share of all the public domain, are, by the principles of this bill, forever foreclosed and excluded from the inheritance their people supposed they had derived from their forefathers. There are now thirteen hundred and sixty million seventy thousand six hundred and eighty-one acres of this public domain unsold and unappropriated. More than one hundred and fifteen millions have been donated to the different new States and Territories, and more than one third of that has been given to the new States for public schools, while four millions for universities, five millions for internal improvements, eight millions for railroads, and thirty-five millions of swamp lands, have also been conferred upon them. Twenty-five millions have been granted for military bounties, of which Virginia has had eight millions. Yet the honorable member from Michigan says the new States have been cruelly dealt with in these matters by an unfeeling landlord, meaning the old States, many of whom have received nothing. He says the new States have paid, twice over, for all their school lands! If so, a gift to them of all that is left would utterly bankrupt them!

But to return to President Jackson's veto message. I put it to any honorable man, what ought to be the degree of authority attached to the doctrines of that veto? It was a message which could not have been sustained if the Senate and House of Representatives of the United States had been permitted to exercise their constitutional rights on that occasion. Is that the paper on which this bill is now to be condemned, and that, too, in defiance of all the precedents established by Jackson himself, in cases where no party passion or personal prejudice operated to drive him to opposition to the opinions of the Senators representing the States of the Union, and the Representatives of the people in the other House? The action in regard to the Cumberland road, the Polish exiles, and the grant to Lafayette, are directly in hostility with the principles announced by General Jackson in the veto of the land bill. If you are disposed to bow in deference to his authority, will you take his sentiments proclaimed in that veto message under the circumstances I have stated, or will you take his whole course of action as I have described it in reference to all other measures? The appeal was held to be well taken from Philip to himself; and the weight of Jackson's authority, when uninfluenced by any private motives, is overwhelming in favor of the bill on the table.

The first and great objection made to the land bill by President Jackson, in December, 1833, which came in nine months after the bill had been passed, was that by it twelve and a half per cent. of the whole proceeds of the sales of the public lands were to be ceded to the seven new States, before there was to be any division among the old States; and that, he said, was inequality and injustice. He relied on that beyond any other argument. Has that any application to this case? Is there any such injustice here? Is there any provision that twelve and a half per cent. of this fund shall be distributed among the new States, or any other States, before the whole fund is distributed? No, sir. If we are to accredit the committee that reported this bill, equal justice has been done in the mode of distribution which they adopted. They have proposed to give, first, one hundred thousand acres to each State, and then to adopt a compound ratio of geographical area and representation in the other House for the equitable division of the residue. They say—and I am bound to adopt their conclusion until some man shows that there is an improper apportionment of the fund—that this is the nearest approximation to exact justice among all the States that they can possibly make.

It is probable that you cannot make any division of the fund to which some exception might not be taken. But here is a great measure of charity—a measure upon which every good man must look with intense interest and anxiety for its success, if the measure be not unconstitutional. Here is a measure of equal justice among the States, as we have every reason to believe. It is not to be decided against by the authority of a veto upon a land bill which did not effect the same justice, but gave to the new States twelve and a half per cent. of the whole proceeds of the public domain, before dividing among the other States a dollar.

As to the other principles laid down in that veto message of General Jackson, they are directly contrary to his other decisions and acts in public life. I take General Jackson, acting upon eight or ten bills, every one of which would sustain the principle of the bill on the table, and I hold up his authority against his veto, made under such circumstances as those which I have truthfully and faitly described.

Mr. President, no remark has fallen from me derogatory to the true character of Andrew Jackson. No man adheres more scrupulously to the maxim, *De mortuis nil nisi bonum*, than myself. Besides, I entertain no feeling which could lead me to disparage the character of that great man, who acted on many occasions the part of a great and devoted patriot. No one can be more grateful for the services he actually rendered to his country; and I have stated nothing but what is absolutely necessary to do justice to the States of this Union and the great subject before me.

But, sir, let us now look to the precedents established by President Polk. One of the first acts of his Administration was to sign a bill which sustains the one on the table in every particular. The memorial of the General Assembly of Tennessee, praying the cession of one million three hundred thousand acres of land within the limits of that State, being all the lands south and west of the Congressional reservation line, was presented to Congress, which passed a bill making the desired cession; and on the 6th of August, 1846, President Polk approved that bill. This act granted to Tennessee all the public lands remaining within her

limits, on condition that the State should found and endow a college, and expend in the endowment and foundation of it not less than $40,000. I have the act before me. Was that unconstitutional? If it was unconstitutional, who did it? Was any objection made to it in either branch of Congress? No, sir; no man objected to it. The Democratic party was in full power in both Houses. The Whigs made no objection. The bill passed without opposition on the ground of its unconstitutionality from any quarter; and the whole one million three hundred thousand acres were surrendered to the State of Tennessee on the condition stated.

Then, sir, if it be constitutional to erect and endow a college out of the proceeds of the public lands, is it not constitutional to erect and endow an insane asylum? Where is the reasoner that can shear so close betwixt the north and northwest side of a hair, as to show me how one of these acts is constitutional and the other not? It has been said, I know, and it is said in this message, that such grants have been made on the ground of "prudent proprietorship," that is, that the lands are surrendered for the purpose of making other lands more valuable. But the whole of the lands south and west of that congressional reservation line in Tennessee, being the whole of the public land in that State, was surrendered by the act of August 6, 1846; and there was no other land there to be benefited. What became, pray tell me, of your doctrine of prudent proprietorship in that case? I am sorry the honorable Senator from Michigan [Mr. Cass] is not here to inform me how the doctrine of prudent proprietorship justified this grant. How could the United States, as a prudent proprietor, gain anything in the value of the residue by giving up the whole of the public lands in Tennessee to endow a college?

This was another one of these compacts between the Federal Government and a State, which the Supreme Court of the United States has solemnly decided to be constitutional and valid—just such a compact as we propose to enter into by this insane asylum bill, between the Federal Government and the States. This college was to be constructed, by the terms of that bill, in Jackson, Madison county, Tennessee; and, as I have said, the grant was made on the application, by memorial, of the Legislature of that State.

I have nothing to say, because all that is necessary has already been said, in reference to the grants which were made to Kentucky and Connecticut, for the purpose of erecting asylums for the deaf and dumb. They are admitted to be cases directly in point. They have the high authority of James Monroe and his Cabinet. In vain does the honorable Senator from Virginia attempt to pass them over with disregard, because, forsooth, they were not donations of vast tracts of land. The power of the precedent is not derived, in cases of this description, from the quantity of land that is decided upon. It is the full consideration of the principle in controversy that gives force to the precedent; and it appears that when these bills passed, the principle was thoroughly discussed in Congress. The constitutional question was raised, and decided by an overwhelming vote, that to provide for these asylums for the deaf and dumb, by grants of lands to the States, was constitutional and valid.

I will not stop for the purpose of invoking the great names of all the men who stood in James Monroe's Cabinet, or in the Cabinet of Andrew Jackson, or of James K. Polk; but I might well apply the argument with force to the honorable Senator from Michigan, who denied the constitutionality of this bill, by saying to him that he was one of the constitutional advisers of President Jackson from August, 1831, until the middle of the year 1837; and during the time when the precedents set by that Administration, to which I have referred, were established, he must have been present in the Cabinet advising the very measures adopted by President Jackson. I have a right, then, to the authority of his name among the host I have presented.

Other cases might be cited. In the year 1841 five hundred thousand acres of land were granted by act of Congress to each of the new States; and to this day there is a law on your statute-book for the distribution of the proceeds of the sales of the public lands. Bring down the duties on imports now below twenty per cent., and the moment you do it, the proceeds of the sales of the public lands are, by law, ordered to be distributed among the States. If that be unconstitutional, pray why has nobody moved to repeal it? The mere fact that the duties may never be so reduced, is no good reason for permitting an unconstitutional act to remain on the statute-book. It received the Executive sanction in 1841, and it still remains a law of the land.

On what principle were the five hundred thousand acres of land granted to each of the new States in 1841? Was it on this doctrine of prudent proprietorship? Why, sir, the Senator from Mississippi [Mr. Brown] was Governor of the State of Mississippi at the time the bill passed, or at the time when the land was located in that State, and he located the whole five hundred thousand acres in a body, taking care to select the very best land there was in the State. Was that a case of prudent proprietorship? Were those lands ceded merely for the purpose of making other lands valuable?

Sir, it would be a waste of time to meet arguments like those in regard to prudent proprietorship. I have often voted for grants of land for railroads in the new States. I have voted liberally for the western States, because I delighted to see their advance in all the arts of life; I delighted to witness their prosperity as great and growing members of our greatly growing Republic. I delight to witness it still. But I never was humbugged for a moment by this idea of prudent proprietorship. It is a doctrine that will not bear scrutiny, and no constitutional lawyer can stand upon it. It results inevitably in this: that your act is constitutional or unconstitutional as your appropriation happens to terminate for the benefit of the lands adjoining, or not. In the contingency of its not benefiting the other land, the grant is unconstitutional by the very terms of the argument; and in the contingency of its doubling, or greatly increasing the value of the surrounding land, it becomes constitutional!

But, if land may be granted whenever, in the judgment of a prudent proprietor, it would benefit the rest of his estate, is not Congress the party to judge of the prudence of the grant, and has it not here decided that the grant in this bill is prudent and proper? The President, by assuming this ground to justify the past acts of Congress

granting lands to the States, and even to private individuals, has yielded the only question before us, and, by it, has reduced himself to this dilemma—that either this, like the other cases cited, is a grant which a prudent proprietor ought to make, and, therefore, is constitutional and proper, or if not, he is the judge of the propriety of making it, and, therefore, he is so far, the prudent proprietor himself, that nothing short of two thirds of Congress can overrule his opinion of what is the duty of a prudent proprietor. It is a strong illustration of the danger of extending the veto power to mere questions of expediency, policy, prudence, and justice, instead of confining it to cases where Congress has transcended its legislative power.

Many other grants of land, to which I might refer, have been passed within my recollection, to which no constitutional objection was made; and there have been other grants not merely of land, but of money. I remember well the consultation between a distinguished Senator from Kentucky, not now here, [Mr. Crittenden,] and myself on the night before he introduced his proposition appropriating $500,000 for the suffering poor in Ireland, at the time of the great famine in that country. We did not fear the constitutional question when humanity made such an appeal to us. We supported the measure, and it met with an overwhelming majority in its favor. So, too, sir, Congress made an appropriation, as the Senator from Vermont stated in the course of his argument, of $50,000 for the suffering people of Caraccas, after the great earthquake; and $20,000 to Alexandria, after the great fire in that city.

I will not go further into the list of precedents. The remaining cases have been stated fully by the honorable Senator from Vermont, who now occupies the chair, and by the Senators from North Carolina and Mississippi. Suffice it to say, that, so far as regards precedent, the Senators from Virginia and Michigan evidently felt that if precedents were to have any effect, their force on this occasion was crushing.

But the Senator from Virginia demurred to their authority. He says precedents are not obligatory upon us. I never said they were conclusive. In courts, both of law and equity, no judge feels himself at liberty to depart from well-considered authority. The honorable Senator from Virginia, however, admitted that these precedents were to have the effect of persuasive arguments. They are the evidences of the opinions of so many distinguished and able men in reference to questions which were thoroughly considered by them, and with all the means of deciding them properly at the time they were presented. When he admits that he yields all that I ask him to admit. Who ever contended that the effect of precedents of this description, establishing a principle by a vote of Congress, was to make an alteration in the Constitution of the United States? Nobody has pretended that the Constitution could be changed by precedent. No, sir; but precedents are evidence, and among the best evidences of the true manner of expounding the Constitution. It is for the purpose of showing that evidence that we cite them; and great must be the respect of all men for such a train of precedents as has been cited here.

Sir, there is a paper known among Englishmen which has been regarded for many centuries almost as sacred as our own Constitution—their *Magna Charta*. It has been the subject of disquisition among the ablest law-writers of England. The true construction of *Magna Charta* has also been the subject of judicial discussion among the ablest judges England ever produced. What has been the effect of precedents there? The decisions of one court construing a clause in *Magna Charta* have been held to be binding on another; and the interpretations of it by one Parliament have been respected by another ever since the days of the Stuarts. I do not mean to say to the honorable Senator from Virginia that there is no great force in what he said, that precedents are sometimes lightly and loosely established, and are not entitled to be considered as absolutely obligatory and binding on us; but they are, to use his own happy language, persuasive, and powerfully persuasive evidence with us when searching to arrive at truth. Decisions construing the Constitution of the United States, whether by the Supreme Court or by the Congress of the United States, upon full consideration of all the merits of the questions decided, are, in my judgment, entitled to as much weight and consideration as decisions in England upon the construction of *Magna Charta*.

I am, however, sir, perfectly willing to throw aside precedents. I am willing to take this case, and treat it as a case of the first impression. I feel no hesitation whatever in meeting the honorable gentlemen on the other side on that ground, independent of all authority. If there never had been a precedent before, I hold, according to the true construction of the Constitution of the United States, that a plainer question for decision could not be presented; and it is not necessary for me to moot the point with the honorable Senator from Virginia, whether the second clause in the third section of the fourth article of the Constitution confers unlimited powers or not. All I have to ask of him to concede in order to sustain this bill is, that that clause does give Congress the power "to dispose of" the public lands equally among the States for a purpose approved of by themselves, and which Congress, as well as the States respectively, agree is a proper one. That far I go; that far I undertake to maintain now, without reference to precedents. The honorable Senator says no; it would lead us to a Russian autocracy or an Oriental despotism. How, sir? He says that on this principle we might build colleges and make roads in the States! One of the charges represented to have been brought against the Lord Say by a distinguished character in ancient times was, that he had corrupted the youth of the Commonwealth by founding a grammar school.

But how is the country to be destroyed by the erection of colleges and schools, and how is the public to be corrupted by the construction of roads and the establishment of asylums for the indigent insane? Will any man tell me that? Does any one become more polluted by traveling over a good Cumberland road, than by going up to the hub through the mire where there is no road established?

The Senator from Virginia was at least consistent in his argument. I am sorry that I cannot say the same for the Senator from Michigan. The Senator from Virginia made and drove his argument with great effect against the homestead bill,

and so far I thank him for it. There was no doctrine of prudent proprietorship laid down by him to support that outrage on the rights of the American people.

The Senator from Michigan opposes the indigent insane bill, which gives only ten millions to the States for the benefit of the insane natives of this country, and warmly advocates the homestead bill, which grants one hundred and sixty acres to every foreigner not naturalized as soon as he lands on the soil, thus giving away hundreds, not merely tens, of millions to aliens. The small grant to the wretched insane who are too poor to pay for their own subsistence is too gross an abuse of power for him—he thinks it unconstitutional as well as impolitic. The monstrous proposition, to grant choices, in more than *thirteen hundred thousand acres*, for the benefit of every jail-bird flying from Europe, and every loafer who may choose to settle on them—a grant which can never inure to the benefit of the industrious mechanics or others not trained to and bent on farming as a business—is, in his judgment, he says, the *great bill of the age*, and worthy of all commendation, and clearly constitutional as well as just. He becomes eloquently eulogistic in its favor. Alas! the insane cannot vote in Nebraska, the aliens may! But the result of this distinction is, that half the argument of the Senator is suicidal to the other half. It could not be otherwise.

The honorable Senator from Michigan took a distinction between the power to dispose of the public lands and the power to apply the proceeds of the disposition of them. It follows that, when there is no grant of proceeds merely, but of land—as when Virginia and Ohio obtained, with his assent, the Cumberland road, and when Tennessee obtained all the lands left in her limits—the grant is constitutional. Now, in the case before us, it is the land, and not merely the proceeds of a sale in the Treasury that is granted. To sustain the homestead bill, he admits that Congress has power to dispose of the public lands, and give one hundred and sixty acres to everybody who would come and take them. That, he said, was clear; there was no doubt about that; and he told us, he did not doubt but that the President would sustain that homestead bill. The Senator from Virginia does not agree with him as to the intentions of the Executive. The Senator from Virginia draws an entirely different inference from this message, as to the future action of the Executive in reference to the homestead bill, from that which was so confidently made by the Senator from Michigan. The former thinks that he is one of the "friends of the Administration," and is sustaining that Administration; but, sir, he would be supporting it "over the left," if the opinion of the Senator from Michigan be a sound one, that the President will sign the homestead bill. This veto message must be a paper of miraculous power which can thus secure the unbounded applause of two Senators who are as wide apart from each other as the antipodes, in regard to the only principle it professes to discuss!

Now, sir, somebody is deceived in regard to this matter. Who is it? Perfectly certain it is, that the Senator from Michigan believes the Executive will sign the homestead bill; equally certain is it, from the whole course and argument of the Senator from Virginia, that he believes the President will veto it, as he has vetoed the indigent insane bill. Both cannot be right. There is a play, with the title "Who is the Dupe?" I ask, who is the dupe in this play?

I have seen something of this kind before. During the year 1846, the country went crazy for about six months, in favor of the Baltimore platform, "54° 40', or fight." That platform was discussed here in Congress from day to day, until the whole commercial community became alarmed; the price of insurance was raised; the merchants were frightened from their propriety; infinite mischief was done by destroying confidence among men of business. I believe that about three fourths of all the members of Congress, in both Houses, believed we stood on the very eve of a war with England. They thought the President was perfectly sincere in insisting, as he did at the time, that we should either have the whole of Oregon or none. Gentlemen said they were too proud to take any part of it, if they did not get it all. That same declaration was thundered here by the press, from day to day. It was very popular, and the canal boats, and even some of the babies, it was said, were christened "54° 40'". I was an attentive listener to all the eloquence of "54° 40', or fight."

The Democratic party here then was divided as it is now. The Senator from Michigan was called a "54 40." He was for all or none, and seems to be so now, for he will grant no land if he cannot give it all. The Senator from Virginia was called a "49." Each of these gentlemen with their followers, of the same Democratic faith, understood the President, as they told us. The northwestern gentlemen on that occasion, including the distinguished Senator from Michigan, were perfectly sure that the President intended never to surrender an inch, but would insist on 54° 40', let the consequences be what they might. But one day an honorable Senator from North Carolina, and a very able and excellent gentleman, Mr. Haywood, came in and told us that he was quite sure the President had settled the matter on the basis of 49°. Thereupon a very distinguished and eloquent gentleman from the northwest declared that if the President had resolved to surrender 54° 40', and go for 49°, he had sunk himself so low that the hand of resurrection could never reach him. Such was the confidence of each division in its own belief, and each professed to have derived its confidence from the President's own declarations.

While they were thus arrayed against each other, we on this side of the Chamber knew not what to make of it. We had no say in the matter, but we were amazed, and stood back, as common people say, like poor folks at a frolic. [Laughter.] We heard these gentlemen debate the question, but we did not know who was right, and we then inquired, as I inquire now, who is the dupe? [Laughter.] Some one was bound to be bit, that was certain, and somebody was bit at the close. Who that somebody was it is not necessary for me to say now.

Sir, if I felt sure that the honorable Senator from Virginia was right in this matter; if I was perfectly certain that the President would veto the homestead bill, I do not know that I should have opened my mouth upon this occasion. Whatever opinions I might entertain I would have sustained

by my vote, but I do not know that I should have said a word. But I am sadly afraid that he will this time find himself mistaken. The honorable Senator from Michigan has the weather-gauge, and understands exactly how the land lies. Like the President himself, he is a native of New Hampshire. He is an older—I do not say a better—party man than the Senator from Virginia, and stands at the head of his party. I think he makes a great many visits to the White House, and he ought to know the feelings and wishes of the President. He told us, on the day before yesterday, how the President would escape the argument of the honorable Senator from Virginia, and how, on this doctrine of prudent proprietorship, he would sustain the homestead bill; arguing, as the honorable Senator from Michigan did, that by giving away one half of a farm, you make the other half worth just as much as the whole was before.

It is due from me, sir, to the honorable Senator from North Carolina, who entered as you did with distinguished ability into the debate on the veto, that I should defend him against some palpable misapprehensions of the Senator from Michigan. The Senator from Michigan, in replying to him, treated his argument in one particular with eminent injustice. The Senator from North Carolina never said that he took the preamble to the Constitution as a grant of power. He said expressly, in reference to the second clause of the third section of the fourth article of the Constitution, that he considered rather that the preamble of the Constitution was a restriction of the *jus disponendi* contained in that portion of the fourth article; but certainly he cited it as containing evidence to show the limits within which Congress should exercise the power; whereas the honorable Senator from Michigan treated the argument of the Senator from North Carolina as if the latter gentleman had attempted to draw a positive grant of power from the mere preamble to the instrument. And here, sir, let me expostulate against another sort of argument that has been used by honorable gentlemen on the other side, and by the President himself in his message. I shall now, as I have desired during the whole discussion to do, speak with the most perfect respect for the President. No remark has escaped from me, and none will, that could possibly be considered as disrespectful to the Chief Magistrate of the country. I am only exercising my privilege, and doing my duty, in discussing the principles contained in his paper. That duty does not require of me to censure him for having sent that paper here; nor would I treat it with rudeness; because it is a paper sent here by him in obedience to a solemn duty enjoined on him by the Constitution of his country. If I had no other reason, I am bound as a Senator to treat his opinions fairly and honorably, while I am engaged in the discussion of them, and himself with perfect respect. But as to that part of the Executive message which cautions us against the application of the "general welfare" doctrine, for what purpose was such an argument as that introduced into the discussion? Why was it put into the message? Has any man, within the memory of anybody now present, ever contended that the first clause in the eighth section of the first article of the Constitution, providing that "Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare," was anything more than a provision to lay duties and taxes *for the purpose* of paying the debts, and *for the purpose* of the general welfare and common defense? Why, sir, long before the President was born, in the forty-first number of the Federalist, James Madison discussed and elucidated the whole of this subject. Every tyro in politics knows there is no power called the "general welfare power" in the Constitution. Fifty years have passed away, and I have not heard of any man contending during that time that there was any such power as that. But honorable Senators on the other side will allow me to say, that by this mode of argument, adopted by them, following up the example set by the President in his veto message of fighting against shadows, contending that the general welfare doctrine is all an error, which nobody denies, they create necessarily the impression that there is somebody in the country, and that that somebody must be some friend of this bill, who does contend for such a folly and absurdity as that. There is the wrong done by ringing the changes upon this "general welfare doctrine." Sir, it is only building up a man of straw, and showing how adroit you are in knocking him over. No man who pretends to have read with care the Constitution of the United States, certainly no one who is worthy of being considered as a statesman, contends for a single moment that under that clause called the "general welfare" clause, Congress can do everything and anything they please. No such latitudinarian expositor of the Constitution, so far as I know, exists.

We come at last, sir, after having traveled thus far through this discussion to the great question—upon which we were told in the outset by the honorable gentleman on the other side, we were to be enlightened by this debate and this message—a question discussed by the honorable Senator from Virginia, and propounded by others who spoke of it—a question of great practical importance to this nation: How shall the proceeds of the sales of the public lands be best applied so as to accomplish that equality of benefit desired among the States, and best answer the purposes of those who ceded the lands to the United States, and the purposes contemplated by the Constitution? And now I propose to ask the attention of the Senate for a few minutes, while I examine the doctrine of the honorable Senator from Virginia on that subject.

The Senator from Virginia [Mr. HUNTER] says:

> "If you apply the proceeds of the sales of the public lands to the ordinary expenses of Government and the diminution of taxation, you will then accomplish the objects of the deeds of cession, and the Constitution precisely and with mathematical certainty, because you diminish taxation by that amount, and therefore relieve each State in the precise proportion of its usual and respective share of the general charge and expenditure."

The answer made to this by the Senator from North Carolina [Mr. BADGER] was, that appropriations were unequal among the States, and therefore this mode of applying the proceeds of the sales of the lands could not be equal.

The Senator from Virginia admits this, but says the inequality will exist, whether the expenses of Government be paid by taxation or by sales of

the public lands; and then the Senator from Virginia exclaims in triumph again, that

"You accomplish the precise equality of benefit sought for, by applying the proceeds of the public lands to the ordinary expenses of Government, and diminish the taxation in the like proportion."

That, says he, accomplishes it with mathematical certainty, because you diminish that amount of taxes, which otherwise they would pay.

The honorable gentleman evidently thought he had triumphed over the friends of the bill by thus pointing out the only mode in which the public lands could be applied as a common bounty for the equal benefit of all the States, agreeably to the deeds of cession, and what he deems to be the requisitions of the Constitution. I propose now to analyze the honorable Senator's argument.

Is it true that by diminishing the duties on imports, which form the only other great supply of the revenue to this Government besides the public lands, you thereby accomplish a precise equality of benefit to the States? It is unnecessary to deny that if the proceeds of the sales of the public lands are applied exclusively to the ordinary expenses of the Government, and no more revenue is raised by duties on imports than is necessary for an economical administration of the Government, the duties on imports must be lowered in proportion as the proceeds of the sales of the lands increase. That is one effect of the application of the proceeds as the Senator from Virginia proposes, and I will grant him so far the benefit of all that can be conceded in favor of his argument as to say that it is an inevitable effect. The inquiry, then, resolves itself into this: Are the States equally benefited by the reduction of the duties on imports? Is it true that any of them would be benefited by an absolute repeal of the duties?

Before the formation of the Constitution, each State in this Union had the power of laying duties on its own imports. That was an essential attribute of the sovereignty of each of them, which was surrendered to the General Government by the Constitution. It was a power surrendered to this Government, not to be extinguished or abandoned, but to be exercised for the general good. Before the Constitution, the States had, and some of them exercised, this power not only for revenue but for the protection of their labor against foreign competition. It was necessary for their prosperity, if not for their existence. Aware of this, no such thought ever prevailed among the States, as that by the transfer of the power to the Federal Government, they were about to extinguish the power; and since the union under the Constitution, they have demanded, and had a clear right to demand, that the Federal Government to which it was assigned, should, in good faith, exercise the power for their benefit. If the duties on imports were repealed to-day, this Government would be false to its trust, and the States would not submit to such a gross abandonment of its duties.

The inevitable consequence would be not merely the failure to pay debts and provide for the ordinary expenses of Government, but the States would be flooded with foreign manufactures and the products of all nations seeking a market here, and driving out the products of our own industry. The States would be reduced to a condition of colonial vassalage to Great Britain, as abject as that which existed before the Revolution, although she would not, as she did then, pay the expense of governing and protecting us. Yet disastrous as the condition of all the States would be under a total abolition of the duties, the evil would not fall equally upon all. The manufacturing districts of the country would be immediately ruined. Pennsylvania would undoubtedly suffer more than Virginia, and Massachusetts and Rhode Island more than South Carolina; though the American market for grain, iron, and other Virginia products being destroyed, Virginia herself would soon find her own condition intolerable. The inequality of the mischief which would be inflicted upon the States by the introduction of all foreign products and manufactures duty free, is so plain to every man's mind that I may infer the Senator from Virginia himself agrees with me in that respect.

It is quite clear then that the exclusive application of the proceeds of the sales of the public lands, to expenses of the Federal Government, if it should cause, as the Senator says, the necessary diminution of taxation, by which he means duties on imports, may produce very unequal effects upon the States of this Union, and the injuries thus inflicted upon some may be destructive to them while it may be by no means so severely felt by others. It has been said that if the proceeds of the sales of the public lands had been properly husbanded, and they were all now carefully applied to the ordinary expenses of the Government, if the wasteful system of donations had never been introduced, and the funds had been economically protected and applied, they would now pay the expenses of a truly economical administration of the Government without resorting to the customs. Be this as it may, it will at least be admitted by all, they would materially reduce the amount necessary to be collected for the ordinary expenses of Government, so that if duties on imports were laid only for revenue, the tariff would be so much lowered that no essential protection could be derived from it on any article of American growth or manufacture. With five per cent. duties assessed on a foreign valuation, what would become at once of the coal and iron interest of Pennsylvania, or the sugar of Louisiana, or the manufactures of the northern and middle States generally? Any man can thus see the utter fallacy of the argument of the honorable Senator, when he assumes it as a postulate not to be denied him, that, by applying the avails of the public lands exclusively to the expenses of Government, you do with mathematical precision equally relieve the States of this Union, and thus, with that boasted mathematical precision, apply the land fund for the benefit of all the States, according to their proportions in the common charge and expenditure. The benefits proposed by the gentleman palpably become curses to some States, which would make their condition intolerable, and perhaps, eventually, as ruinous and oppressive to them as if, instead of surrendering the power of laying duties on imposts to the Federal Government, they had extinguished the power forever, and yielded up this essential attribute of their sovereignty to a foreign nation, to enable that nation to impoverish and enslave them.

I do not mean to be misunderstood, Mr. Presi-

dent. I do not contend that the land fund, wasted as it is under the profligate administration of it by this Government, would, if applied to the expenses of the Government, supersede the necessity of duties on imports, but I do mean to say that the land fund, if rightfully protected and applied to the support of Government, would render it unnecessary to lay such duties for the mere support of Government, as could have any beneficial effect in protecting home labor. Nor let any one imagine that I concur at all in the theories of the Senator from Virginia, that every duty on foreign imports is a tax on the consumer. The absurdity of that idea has been so often refuted, that I do not pause to dwell upon it. Everybody knows that the duties on some articles of American manufacture, have exceeded the price in the home market, so that if the theory were correct, that the consumer pays the duties, he would pay more than the price of the articles in the home market. The Senator's plan of applying the proceeds of the public lands as a common fund, for the equal benefit of all the States, might become the most unjust that could possibly be resorted to, and if ever it should, by an extraordinary appreciation of these lands, become sufficent to render all duties on imports unnecessary, and lead to so fatal an act of folly as the repeal of all duties, the State of Virginia might have the melancholy satisfaction to find herself among the last to be destroyed, but not the less certainly to be ruined.

Prominent among the objections of the President to the bill, he presents the argument, that if Congress has the power to provide for the indigent insane, it has the same power to provide for the indigent who are not insane, and for other objects of charity; and he therefore infers that if Congress may provide for any one of these objects, it may and ought to provide for them all; and so, he says, the Government must become the great almoner of public charity.

Now, this is like the reasoning of the miser who was applied to by the blind beggar in the street for a sixpence to buy a loaf of bread. "If I give to you, poor fellow," said he, "I may and ought to give to the deaf and dumb. I ought also to give sixpence to every indigent sick man in the world; and, indeed, I ought at once to divide my property among the needy, which would make me the great almoner of public charity." So, because he could not give to one without giving to all, he resolved that he had no right, consistently with his duty to himself and his family, to give the sixpence to the blind beggar. The argument is, that Government cannot and ought not to consider a charity as within the limit of its power, lest, by performing one act of charity, it should be driven, by following up the example, into a state of bankruptcy. The same train of reasoning would induce a man to refuse to pay a portion of his debts, because he could not pay them all; and it would form a good excuse and a good justification to the heartless for withholding an act of charity whenever applied to. To relieve all the sorrows and sufferings of humanity is within the power of Omnipotence alone; and the reasoning is reduced to this simple position, that because the Government is not omnipotent, it has no power at all.

But the President makes another objection. He takes sides in favor of the insane, to fortify his argument against them. He says: "And if it were admissible to contemplate the exercise of this power for any object whatever, I cannot avoid the belief, that it would, in the end, be prejudicial rather than beneficial to the noble offices of charity, to have the charge of them transferred from the States to the Federal Government," thus assuming that the bill does transfer the charge of the insane from the States to the Federal Government, whereas, in truth, the bill leaves the charge of them to the States, where it found them, and only transfers to the States a portion of the propterty which belongs to them, for whose benefi this Government holds the lands as the trustee of a common fund. The bill does not enjoin the offices of charity upon the States. It recognizes the duty of charity as existing already in the States, and transfers nothing to them but the property to enable them to execute the offices of charity. The President assumes the attitude of an advocate and protector of State rights, while the whole effect of the veto is to prevent the States from enjoying the rights secured to them, not only by the deeds of cession of the public lands, but by the Constitution itself. But the pretext that the States are deprived of any rights will be unavailing. There is nothing in the bill to compel them to accept the lands for the benefit of the indigent insane; on the contrary it leaves them free to accept the lands or not, as to them shall seem fit. The argument deals a fatal stab to the rights of the States to their respective shares of the public lands, while it professes to protect them.

The message declares the bill to be in violation of the faith of the Government, pledged on the 28th of January, 1847, by which the proceeds of the sales of the public lands are pledged for the redemption of a part of the public debt. We have more than thirteen hundred millions of acres of public land. The hundredth part of it would be ample security for all the public debt for which it is pledged, to say nothing of the revenue from duties on imports and other sources of revenue which are applicable to the payment of the same debt. Sir, such an argument should not have found a place in a grave State paper. A debtor in private life, owning real estate of the value of $1,000,000, mortgages it for the payment of $100, the amount of his debt. The argument is that he may not sell any portion of his vast property without a violation of faith. The mortgagee in such a case undoubtedly retains his lien until the debt is paid, but should he attempt to sell the land in the hands of the purchaser of a small part of the property, there is not a court of equity in Christendom that would not enjoin him from so doing, and compel him to resort to the fund still remaining in the hands of the mortgagor sufficient to pay a hundred times the amount of his debt. The same argument proves that every donation of the public land which has been made since the 28th of January, 1847, is a violation of public faith. Where are those gentlemen who voted for the grants of land for western railroads, amounting to millions of acres? In what a position does this place the champions of public faith, who sustain this veto, and yet remain the consistent advocates of the homestead bill? Every grant of land which has been made for the last ten years is unconstitutional, and a violation of public faith, if there be any validity in the President's argument.

The President says, "I have been unable to

discover the distinction, on constitutional grounds, or on grounds of expediency, between an appropriation of ten millions of dollars directly in money from the Treasury for the object contemplated, and the appropriation of lands presented for my sanction." And this sentence follows immediately after the argument founded upon the alleged breach of public faith. Well, if there be no such distinction, then every grant of the public money and every act paying a claim on the Government out of the Treasury, since January 28, 1847, has been also unconstitutional. The act of that year pledged the faith of the United States for the payment of the public debt, as well as the public lands, and the argument drives us to the conclusion that every appropriation bill passed during the last ten years has been an unconstitutional violation of public faith. The President adds:

"In a constitutional point of view, it is wholly immaterial whether the appropriation be in money or in lands. The public domain is the common property of the Union just as much as the surplus proceeds of the duties on imports remaining unexpended in the Treasury. As such it has been pledged, is now pledged, and may need to be so pledged again for public indebtedness."

Sir, your country contains, according to the statistics of 1850, thirty-one thousand three hundred and ninety-seven insane persons—that is, lunatics and idiots. The law knows no such distinction as that taken in the message between insane and idiotic persons. Idiots are of course insane. According to the information which we derive from institutions like those which this bill purposes to establish, such as have been established in Massachusetts and in England, where experts and physicians have been taught to instruct the insane, and train the remnant of mind that is left, you find that at least two thirds of these miserable beings might be restored to society and become useful members of it. But, how? Not by confining them, as they are now confined, in almshouses, where there is no knowledge of the art of reclaiming them; not by sending them to jails and prisons, where

"Moody madness laughs, and hugs the chain it clanks;"

nor by relying on private charity. Individuals cannot build lunatic and insane asylums in the United States. But, if what those persons who are accustomed to investigate this subject tell us be true, more than twenty thousand of the American people now insane might be restored to reason and become useful members of society, and you tell me you have no power to do it! Suppose, at this moment, more than twenty thousand of the American people were floating in ships like the ill-fated San Francisco, in storms and shipwreck, would you not seek immediate means of relief for them? Would you hesitate to send out your ships for them, and expend millions to save them? Suppose they were given in captivity to a foreign Power, they and their utmost hopes, would not a hundred thousand swords leap from their scabbards to redeem them from that captivity? Sir, they are in an infinitely worse state of captivity and suffering than if they were bondmen to the Turk, or if they were suffering the distresses of shipwreck upon the ocean. It is not possible to conceive of a greater depth of human misery than that which results from the loss of reason. In them you see the human form

"Erect, divine!
This Heaven assumed, majestic robe of earth,
He deigned to wear, who hung the vast expanse
With azure bright, and clothed the sun in gold!"

But, sir, although the form is there, though, indeed, the casket remains, yet the jewel is gone, the intellect has vanished, or if reason still lingers on her throne, she sits trembling and distracted upon it. Still there is the image of Him who made man, and died to save him. And are we men, have we not abandoned all that belongs to our common manhood, if we do not feel for these miserable beings? Shall we strain a point of the Constitution against them? They cannot argue in their own behalf. If we do not protect and defend them, they have no defenders. If we are not their guardians and their advocates, they can find none. Sir, I am exhausted, but I have not exhausted the argument, and I am not capable of doing it. I must leave it to other and abler men, who will follow me in the debate; but if I had strength, I would stand here and plead for these indigent insane as long as a Senator would hear me. I cannot but think, when about to take leave of the subject, of that day when we must appear before the Great Judge of all the earth, and the accusation may be against us that we did not visit those who were sick and in prison? and, oh! when we have answered that, may none of us receive the awful denunciation, "Inasmuch as ye did it not to one of the least of these, ye did it not to me!"